



March 28, 2002

Ms. Pamela Meyer
Assistant District Attorney
County of Dallas
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2002-1530

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160475.

The Dallas County Juvenile Department (the "department") received a request for information relating to an investigation of the Lyle B. Medlock Treatment Center (the "center"), including initial and finalized drafts of the investigation as well as handwritten notes taken by Dallas County officials during the investigation. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.111 of the Government Code provides that "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure]." This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except

¹You indicate that Exhibit 6 consists of representative samples. We assume that the "representative sample" of records submitted in Exhibit 6 is truly representative of the records at issue. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.); ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

You state that "Exhibits 2-5 constitute preliminary drafts of a document which analyzes and recommends changes to existing policies." Furthermore, you state that the department will release the document in its final form. We agree that Exhibits 2, 3, and 4 constitute drafts of policymaking documents and may therefore be withheld under section 552.111 of the Government Code. However, while you state that Exhibit 5 constitutes a draft of the same document, you elsewhere indicate that Exhibit 5 is simply a summary of a meeting between department representatives and the requestor. Based on our review of Exhibit 5, we find that the exhibit does not constitute a draft of a policymaking document. Furthermore, Exhibit 5 contains no advice, opinion, or recommendations regarding the department's policymaking functions. Thus, Exhibit 5 may not be withheld under section 552.111. You also contend that Exhibits 6 and 7 are excepted under section 552.111. Exhibit 6 contains, in part, a questionnaire filled out by a resident of the center. This questionnaire is not an interagency or intra-agency communication for the purpose of section 552.111 and therefore may not be withheld under that section. Exhibit 6 also contains questionnaires filled out by staff at the center. Based on our review of these questionnaires, we find that only a portion of the information therein constitutes advice, opinion, or recommendations on policy matters. You do not explain, nor is it apparent, how the remainder of the information in Exhibit 6 or any of the information in Exhibit 7 constitutes advice, opinion, or recommendations on policymaking matters. Thus, while you may withhold Exhibit 2, 3, and 4, as well as a portion of Exhibit 6 that we have marked under section 552.111, the remainder of the submitted information may not be withheld under section 552.111.

Nevertheless, we note that portions of Exhibits 5, 6, and 7 are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Some of the information in Exhibits 5 and 7 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See* Fam. Code §§ 261.103(a)(3)-(4) (suspected child abuse or neglect shall be reported to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred or to agency designated by court to be responsible for protection of children), .301(a)-(b) (designated agency or responsible state agency shall investigate report of abuse or neglect). No regulations appear to allow for the release of these records in this instance. *See* 34 T.A.C. § 349.503. Thus, the department must withhold the information we have marked in Exhibits 5 and 7 under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code.

Section 552.101 also protects information coming within the common-law right to privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. We have marked information in Exhibits 5, 6, and 7 that reveals the identity of juvenile residents of the center that must be withheld under section 552.101 and common-law privacy. *See id.*; *cf.* Fam. Code § 58.007(b).

In summary, the department may withhold Exhibits 2, 3, and 4, as well as a portion of Exhibit 6 under section 552.111 of the Government Code. The department must withhold marked portions of Exhibits 5 and 7 under section 261.201 of the Family Code and section 552.101 of the Government Code. Likewise, the department must withhold names of residents of the center we have marked in Exhibits 5, 6, and 7 under common-law privacy and section 552.101 of the Government Code. The department must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 160475

Encl. Submitted documents

c: Mr. Harold B. Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)